

Message Text

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SUBJECT : AUSTRIAN NARCOTICS LAW

REF.: VIENNA 6767, STATE 170187

1. ALTHOUGH AUSTRIA HAS NOT YET ADHERED TO THE SINGLE CONVENTION ON NARCOTIC DRUGS OF 1961, AS AMENDED, AND WILL NOT ADHERE TO THE CONVENTION ON PSYCHOTROPIC SUBSTANCES OF 1972, ALL NARCOTICS AND SUBSTANCES LISTED IN SCHEDULES I THROUGH IV OF THE SINGLE CONVENTION ON NARCOTIC DRUGS AND IN SCHEDULES I AND II OF THE CONVENTION ON PSYCHOTROPIC SUBSTANCES ARE SUBJECT TO THE PROVISIONS OF THE AUSTRIAN NARCOTICS LAW. BARBITURATES ARE NOT SUBJECT TO CONTROL UNDER THE AUSTRIAN NARCOTICS LAW AND MERE POSSESSION IS NOT PUNISHABLE. ACQUISITION WITHOUT DOCTOR'S PRESCRIPTION, IMPORT, EXPORT AND TRAFFICKING OF BARBITURATES, HOWEVER, MAY BE SUBJECT TO FINE UNDER OTHER LAWS, SUCH AS CUSTOMS, TRADE AND MEDICAL PRESCRIPTION LAWS AND REGULATIONS. FINES VARY WIDELY AND DEPEND ON AMOUNT OF BARBITURATES INVOLVED AND FACTS OF CASE. MINOR QUANTITIES FOR OWN USE MAY BE IMPORTED.

2.(1) POSSESSION:

- (A) THERE IS NO DIFFERENTIATION MADE IN THE NARCOTICS

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LAW FOR POSSESSION OF VARIOUS NARCOTICS OR OTHER CONTROLLED SUBSTANCES.

- (B)(1) NARCOTICS LAW PROVIDES THAT UNAUTHORIZED PRODUCTION, IMPORT, EXPORT OR TRAFFICKING OF NARCOTICS OR OTHER CONTROLLED SUBSTANCES (SEE 1. ABOVE) OF QUANTITY THAT COULD ENDANGER LIFE OR HEALTH OF CONSIDERABLE NUMBER OF PERSONS IS FELONY WARRANTING IMPRISONMENT FROM ONE TO FIVE

YEARS AND, IF COMMITTED UNDER AGGRAVATING CIRCUMSTANCES, SUCH AS BY MEMBER OF A GANG, FROM ONE TO TEN YEARS, PLUS A FINE UP TO 225,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 15,000 DOLLARS), OR, IN DEFAULT OF PAYMENT OF THE FINE, UP TO ONE ADDITIONAL YEAR IMPRISONMENT. POSSESSION IN SUCH CASES IS REGULARLY CONSTRUED TO HAVE ORIGINATED FROM

EITHER PRODUCTION OR IMPORT OR TRAFFICKING AND IS INDICTED ACCORDINGLY. AUSTRIAN COURTS HAVE HELD THAT 100 DOSES, E.G. THE QUANTITY OF HASHISH FOR 100 CIGARETTES, 100 SHOTS OF MORPHINE OR 100 TABLETS OF LSD, IS SUFFICIENT QUANTITY FOR FELONY INDICTMENT.

- (2) LAW FURTHER PROVIDES THAT UNAUTHORIZED PRODUCTION, ELABORATION, ACQUISITION, POSSESSION OR TRAFFICKING OF LESSER QUANTITIES THAN DESCRIBED ABOVE, EXCEPT POSSESSION OF MORE THAN ONE WEEK'S OWN SUPPLY, IS PUNISHABLE FROM ONE DAY TO SIX MONTHS IMPRISONMENT. IN ADDITION, A FINE UP TO 25,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 1,670 DOLLARS) MAY BE IMPOSED. (IN CASE OF AGGRAVATING CIRCUMSTANCES, SUCH AS PROFESSIONAL DEALING OR INDUCING A PERSON UNDER 21 YEARS OF AGE TO USE DRUGS, THE SENTENCE MAY BE UP TO ONE YEAR PLUS A FINE UP TO 225,000 AUSTRIAN SCHILLINGS APPROXIMATELY 15,000 DOLLARS.)

- (3) ACQUISITION OR POSSESSION OF QUANTITY NOT IN EXCESS OF ONE WEEK'S OWN SUPPLY (SEVEN DOSES) IS NOT SUBJECT TO UNCLASSIFIED

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PROSECUTION, PROVIDING PUBLIC HEALTH AUTHORITIES CERTIFY AFTER MEDICAL EXAMINATION THAT PERSON CONCERNED DOES NOT REQUIRE MEDICAL SUPERVISION OR TREATMENT OR IS VOLUNTARILY UNDERGOING MEDICAL TREATMENT OR SUBMITTING TO MEDICAL SUPERVISION. REFUSAL TO SUBMIT TO SUPERVISION OR TREATMENT CONSIDERED NECESSARY BY HEALTH AUTHORITIES, OR SECOND INSTANCE OF POSSESSION WITHIN ONE YEAR FROM FIRST INSTANCE OF ILLICIT POSSESSION RESULTS IN PROSECUTION AND SENTENCE FROM ONE DAY TO SIX MONTHS AND FINE UP TO 25,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 1,670 DOLLARS). AUSTRIAN FEDERAL MINISTRY OF JUSTICE ISSUED REGULATIONS DEFINING ONE WEEK'S SUPPLY TO BE 30 GRAMS OF HASHISH, 3 GRAMS OF OPIUM, 0.3 MILLIGRAMS OF LSD OR 100 MILLIGRAMS OF METHYL AMPHETAMINES OR AMPHETAMINES.

- (C) WITH THE EXCEPTION OF POSSESSION OF ONE WEEK'S SUPPLY FOR OWN USE, PENALTIES UNDER THE LAW FOR POSSESSION ARE AS SEVERE AS FOR OTHER NARCOTIC OFFENSES (SEE 2.(1)(B) (1) AND (2) ABOVE.)

2.(2) TRAFFICKING:

- (A) LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES INTO A GENERAL TRAFFICKING OFFENSE.

- (B) MAXIMUM AND MINIMUM PENALTIES ARE LISTED IN 2.(1)(B) ABOVE. MANDATORY SENTENCING REQUIREMENT IN CASE OF FINDING OF GUILTY. NO SPECIAL PROVISIONAL LIBERTY PROVISIONS, EXCEPT FOR POSSESSION OF ONE WEEK'S OWN SUPPLY (SEE 2.(1)(B)(3) ABOVE).
- (C) NO ELEMENTS OF THE OFFENSE SPECIFIED IN THE LAW.
- (D) CONSPIRACY TO PRODUCTION, IMPORT, EXPORT OR TRAFFIC OF QUANTITY THAT COULD ENDANGER LIFE OR HEALTH OF CONSIDERABLE NUMBER OF PERSONS (SEE 2.(1)(B)(1) ABOVE) CONSTITUTES FELONY WARRANTING IMPRISONMENT FROM SIX MONTHS

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TO ONE YEAR. IF CONSPIRACY INVOLVES PROFESSIONAL TRAFFICKING, LAW CALLS FOR IMPRISONMENT FROM ONE TO FIVE YEARS. CONSPIRATOR IS NOT PROSECUTED IF HE VOLUNTARILY WITHDREW FROM THE PLOT BEFORE THE COMMISSION OF THE OFFENSE WAS ATTEMPTED OR COMPLETED.

2.(3) CULTIVATION, PRODUCTION, ELABORATION:

- (A) CULTIVATION OF CANNABIS, COCA AND OPIUM POPPY IS NOT PROHIBITED BY LAW. ACCORDING TO OFFICIAL IN CHARGE OF DRUG CONTROL IN AUSTRIAN FEDERAL MINISTRY OF HEALTH AND ENVIRONMENTAL PROTECTION, CULTIVATION OF THESE PLANTS IN SUFFICIENT QUANTITIES TO PRODUCE NARCOTICS NOT FEASIBLE IN VIEW OF AUSTRIAN CLIMATE.
- (B) NO LIMITATIONS ON PRODUCTION, SALE, DISTRIBUTION, ETC.
- (C) ELABORATING NARCOTIC SUBSTANCES FROM CANNABIS, COCA LEAF AND OPIUM POPPIES CONSIDERED PRODUCTION OF NARCOTICS UNDER NARCOTICS LAW AND PUNISHABLE AS DESCRIBED IN 2.(1)(B)(1) AND (2) ABOVE.

2.(4) FINANCIAL:

- (A) PERSON GIVING FINANCIAL SUPPORT FOR ILLICIT ELABORATION OR TRAFFICKING IN NARCOTICS IS LIABLE TO PROSECUTION AS ACCESSORY TO THE FACT OF NARCOTICS VIOLATION AND IS SUBJECT TO SAME PUNISHMENT AS THE ACTUAL PRODUCER, ELABORATOR
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OR TRAFFICKER.

- (B) UNDER THE PROVISIONS OF THE AUSTRIAN FOREIGN CURRENCY CONTROL LAW (DEVISENGESETZ) OF 1946 AND REGULATIONS ISSUED BY THE AUSTRIAN NATIONAL BANK, A RESIDENT OF AUSTRIA MAY EXPORT ON ANY TRIP OUT OF AUSTRIA AN AMOUNT OF 15,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 1,000 DOLLARS) AND AN AMOUNT IN FOREIGN CURRENCY EQUAL TO 26,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 1,730 DOLLARS). EXPORT OF FUNDS IN EXCESS OF ABOVE AMOUNTS REQUIRES APPROVAL OF AUSTRIAN NATIONAL BANK. EXPORT OF FUNDS BY RESIDENT OF AUSTRIA FROM AUSTRIAN BANK ACCOUNT LIKEWISE REQUIRES APPROVAL OF AUSTRIAN NATIONAL BANK. APPROVAL IS DENIED UNLESS APPLICANT PROVES TRANSFER TO BE INTENDED FOR LEGITIMATE BUSINESS TRANSACTION OR FOR OWN USE ON EXTENDED TRAVEL. NON-RESIDENTS OF AUSTRIA MAY EXPORT 15,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 1,730 DOLLARS) AND UNLIMITED AMOUNT OF FOREIGN CURRENCY IF IT CAN BE ASSUMED THAT SUCH FOREIGN CURRENCY WAS PREVIOUSLY IMPORTED BY HIM INTO AUSTRIA. OTHER EXPORTS OF FUNDS BY NON-RESIDENTS OF AUSTRIA ARE SUBJECT TO APPROVAL BY AUSTRIAN NATIONAL BANK. APPROVAL

GRANTED ONLY IF APPLICANT SHOWS LEGITIMATE ACQUISITION OF FUNDS TO BE EXPORTED.

2.(5) CRIMINAL PROCEDURE:

- (A) PERIOD OF INVESTIGATIVE DETENTION UNDER AUSTRIAN LAW IS LIMITED TO MAXIMUM OF ONE YEAR. IN PRACTICE PERIOD DEPENDS ON VOLUME OF REQUIRED INVESTIGATION, IN PARTICULAR ON WHETHER WITNESSES AND OTHER EVIDENCE AVAILABLE IN AUSTRIA OR WHETHER INTERNATIONAL INVESTIGATION WITH ASSISTANCE
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ANCE OF FOREIGN AUTHORITIES REQUIRED. CONSULAR ACCESS PERMITTED DURING PERIOD OF INVESTIGATIVE DETENTION. EMBASSY VIENNA AND CONSULATE SALZBURG ARE NORMALLY NOTIFIED WITHIN 72 HOURS AFTER ARREST.

- (B) CUSTOMARY LENGTH OF PRE-TRIAL DETENTION VARIES

FROM TWO WEEKS TO TWO MONTHS.

- (C) (1) USUAL LENGTH OF TRIAL IS FROM FOUR HOURS TO TWO DAYS, UNLESS POSTPONED FOR NON-APPEARANCE OF MATERIAL WITNESS. (2) NO REVIEW/CONFIRMATION PROCEEDINGS UNDER AUSTRIAN LAW. (3) APPELATE PROCESS NORMALLY THREE TO SIX MONTHS.
- (D) PUBLIC DEFENDER AVAILABLE EXCEPT IN MINOR CASES. ADEQUATE LAWYERS AVAILABLE TO TAKE ANY NARCOTIC CASES. FEE DEPENDS ON SERIOUSNESS OF OFFENSE AND LENGTH OF TRIAL. USUAL FEE FROM 3,000 AUSTRIAN SCHILLINGS (APPROXIMATELY 200 DOLLARS) TO 15,000 SCHILLINGS (APPROXIMATELY 1,000 DOLLARS.)
- (E) CONDITIONAL LIBERTY FOR POSSESSION OF ONE WEEK'S SUPPLY FOR OWN USE (SEE 2.(1)(B)(3) ABOVE.) SUSPENDED SENTENCE POSSIBLE BUT RARELY GIVEN IN OTHER NARCOTICS CASES. RELEASE ON PROBATION AFTER SERVICE OF TWO THIRDS OF SENTENCE POSSIBLE, IN RARE CASES EVEN AFTER SERVICE OF ONE HALF OF SENTENCE. SUCH RELEASE ON PROBATION IS, HOWEVER, RARELY GRANTED IN NARCOTICS CASES.
- (F) MINOR OFFENDERS NORMALLY EXPELLED FROM AUSTRIA BY FOREIGNERS POLICE. WOLF

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